IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

CAMPBELL HAUSFELD/SCOTT FELTZER COMPANY,	:	APPEAL NO. C-100132 TRIAL NO. 09CV-00718
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
DEREK ANDERSON,	:	
Defendant-Appellant.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In this appeal, defendant-appellant, Derek Anderson challenges the trial court's entry of summary judgment for plaintiff-appellee, Campbell Hausfeld/Scott Feltzer Company ("Campbell"), and the denial of his cross-motion for summary judgment on his counterclaim.

Anderson was employed by Campbell beginning in 2006 until he quit in 2008. Anderson contends that he was induced to seek employment with Campbell because of its Education & Tuition Assistance Program ("ETAP"). The ETAP provided that Campbell would pay 100% of the cost of tuition for approved courses taken by an employee seeking higher education. The program required that Anderson remain employed with Campbell for at least two years after completion of his degree, or he would have to reimburse Campbell for all tuition fees paid during

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

the previous two-year period. Anderson would also have to repay his tuition if a degree had not been obtained at the time of termination (whether voluntary or for cause). Both Campbell and Anderson signed several Tuition Assistance Agreements ("TAAs") outlining the program and the reimbursement requirements. These TAAs required Anderson to obtain company approval before completing any coursework and to describe how the requested course was related to his work.

Each TAA specifically stated, "By signing, I further agree to repay the Company for all reimbursed undergraduate and graduate tuition fees if my employment with the Company terminates, either by discharge for cause or resignation, within two years of degree completion. If the degree is not completed at the time of termination, I agree to repay all reimbursed tuition fees paid on my behalf during the previous two-year period. I understand that nothing in this policy represents a contract of employment or alters Ohio's employment-at-will doctrine."

In April 2008, Campbell discontinued the ETAP program. Several months later, Anderson quit and became a full-time student. Campbell sued, seeking the tuition and fees paid on Anderson's behalf during the previous two-year period. The trial court entered summary judgment for Campbell on its claim.

We review the entry of summary judgment de novo. Summary judgment is proper when the evidence shows the following: "(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. The

burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment."[2]

In this case, the trial court concluded as a matter of law that the contract between Anderson and Campbell clearly and unambiguously called for Anderson to reimburse Campbell for tuition payments it had made if Anderson chose to end his employment.

I. The Employee Handbook was Not a Contract

Anderson asserts that the employee handbook constituted a contract, not for employment, but for 100% tuition assistance under the ETAP program. We are not convinced. Generally, employee handbooks cannot be construed as contracts because an employment handbook is viewed as nothing more than a "unilateral statement of rules and policies that creates no obligations or rights."[3] Furthermore, the handbook in this case specifically stated that the company "reserves the right to modify or terminate any health, insurance or employee benefits plan or program at any time and from time to time." When a handbook contains "provisions permitting the employer to unilaterally alter the handbook at any time, [this is] an indication of a lack of mutual assent."[4] Thus, because the employee handbook expressly disclaimed any creation of a contract, and because the handbook unambiguously allowed for unilateral alteration of its terms, no contract existed.

II. The Tuition Assistance Agreements are Separate Contracts

The trial court determined that the TAAs created an express contract between Campbell and Anderson. We likewise hold that an express contract existed, but we are convinced that each TAA was a *separate* contract. Each TAA was an offer to pay tuition

[2] *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46.
[3] *Finsterwald-Maiden v. AAA S. Cent. Ohio* (1996), 115 Ohio App.3d 442, 446, 685 N.E.2d 786.
[4] Id. at 447, 685 N.E.2d 786.

and fees associated with each course approved by Campbell. It is undisputed that both Anderson and Campbell signed each TAA; that Campbell paid tuition under each TAA; and that Anderson reaped the benefit of the tuition payments and received credit for the courses taken under the ETAP program.

Anderson further contends that Campbell promised to pay 100% of the tuition costs for courses taken by Anderson. Anderson is essentially arguing that Campbell obligated itself to pay 100% of the cost of any and all future courses taken by Anderson in pursuit of a degree. Our reading of the contract convinces us that Campbell was only obligated to pay for tuition that it had agreed to pay under the terms of each individual TAA—that is, none of the TAAs constituted a promise to pay all of Anderson's future tuition. It is clear on the face of the contract that Campbell obligated itself to pay tuition fees incurred for each course taken by an employee only when the course had been approved by Campbell management through the TAA.

As Anderson is not arguing or disputing the validity of the TAAs, this court need only give effect to the plain language of the contract.[5] The plain language of the contract called for reimbursement of all tuition paid during the previous two-year period if Anderson voluntarily left employment with Campbell. Since the contractual terms were clear and unambiguous, and the parties agree that a contract existed, summary judgment was properly entered for Campbell.

III. Waiver and Estoppel Do Not Apply

Anderson next argues that Campbell was estopped from seeking, or waived its right to, reimbursement. Equitable estoppel requires that a plaintiff show that there was a factual misrepresentation and that the plaintiff was induced to reasonably rely on the

[5] *Digioia Bros. Excavating v. Cleveland* (1999), 135 Ohio App.3d 436, 446, 734 N.E.2d 438, 445.

representation to his detriment.[6] As Campbell unquestionably fulfilled its obligation to pay the tuition costs for the courses approved under the TAAs, no factual misrepresentation occurred.

Wavier is a voluntary relinquishment of a known right.[7] In this case Campbell's termination of the ETAP program did not constitute a relinquishment of its right to seek reimbursement. And the record is otherwise devoid of evidence indicating that Campbell waived its right to reimbursement.

IV. Cause Remanded to Determine Total Tuition Reimbursement

For the reasons set forth above, we affirm the trial court's entry of summary judgment for Campbell to the extent that it held that Anderson was liable for reimbursing Campbell. We further uphold the trial court's ruling denying Anderson's counterclaim and concluding that Campbell may retain any unused vacation amounts as a setoff to be applied to the amount owed by Anderson. However, as many of the TAAs did not contain "Total Fee" amounts, we reverse that part of the judgment setting the amount of reimbursement at $13,509.57 and remand the case so that the trial court can take evidence on and determine the exact amount of tuition fees for which Anderson must provide reimbursement.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HENDON and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on December 1, 2010

per order of the Court _____.

Presiding Judge

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[6] *Walworth v. BP Oil Co.* (1996), 112 Ohio App.3d 340, 345, 678 N.E.2d 959.
[7] *List & Son Co. v. Chase* (1909), 80 Ohio St. 42, 49, 88 N.E. 120.